

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRADLEY ROBERTS and CHRISTOPHER
ROBERTS,

Plaintiffs,

vs.

7:10-CV-1310
(NAM/GHL)

THE COUNTY OF ST. LAWRENCE, THE
ST. LAWRENCE COUNTY DISTRICT
ATTORNEY, THOMAS FINNERTY and
GERALD JENCKS.

Defendants.

APPEARANCES:

OF COUNSEL:

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Norman A. Mordue, United States District Judge

MEMORANDUM-DECISION and ORDER

I. INTRODUCTION

This Court previously granted in part defendants’ motion to dismiss the amended complaint. The Court dismissed claims against defendants St. Lawrence County, the St. Lawrence County District Attorney and Gerald Jencks. The Court reserved decision on dismissal of the claims against defendant Thomas Finnerty pending the submission of additional evidence and/or briefing. Presently before the Court is defendant Finnerty’s application for dismissal of

plaintiffs' claims against him based on his additional evidentiary and legal submissions. Plaintiffs have not opposed this application.

II. DISCUSSION

As referenced in the Court's previous Memorandum-Decision and Order dated May 2, 2012, plaintiffs' claims against defendant Finnerty must be dismissed as untimely unless they legally "relate back" to the original complaint under Rule 15 (c) of the Fed. R. Civ. Proc.. Under this rule, a defendant must receive actual notice of the original action during the 120-day period provided for service under Fed. R. Civ. P. 4 (m) and must have or should have known that he would be named as a defendant. Defendants assert that the claim against Finnerty cannot relate back to the claim against the District Attorney and St. Lawrence County in the original complaint because Finnerty was not personally served with the complaint and thus had no actual notice of the action. As a further matter, defendants contend that Finnerty had no constructive notice of the original complaint and thus no awareness that he could be named as a defendant in this matter. In support of these allegations, defendants asserted that defendant Finnerty was not employed by the St. Lawrence County District Attorney's Office at the time the original complaint was filed. However, the Court noted that defendants failed to include an affidavit from Mr. Finnerty setting forth any of these factual averments. Based thereupon, the Court reserved decision on defendant's Finnerty's entitlement to the statute of limitations affirmative defense.

In support of the present application for relief, defendants have submitted an affidavit from Mr. Finnerty wherein he avers that he was last employed by the St. Lawrence District Attorney's Office on April 8, 2009. This action was originally commenced on or about November 10, 2010. Mr. Finnerty states in his affidavit that he first received notice of plaintiffs'

claims when he was served with the amended complaint on September 22, 2011. Thus, under Rule 15 (c) of the Fed. R. Civ. Proc., plaintiffs' claims against Finnerty in the amended complaint do not "relate back" to the original complaint since the original complaint was served only on the St. Lawrence District Attorney's Office and Mr. Finnerty had not been employed by that office for over two years. There is no evidence that Mr. Finnerty received actual notice of the original action during the 120-day period provided for service under Fed. R. Civ. P. 4 (m) and Finnerty denies knowing or having reason to know that he would be named as a defendant.

III. CONCLUSION

Based on the foregoing, it is therefore

ORDERED that defendants' motion in further support of their application to dismiss all claims against defendant Finnerty (Dkt. #22) is GRANTED.

IT IS SO ORDERED.

Date: January 18, 2013
Syracuse, New York



Honorable Norman A. Mordue
U.S. District Judge